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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/341,821 09/01/99 WARING

M CV0244

EXAMINER

HM12/0301

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GHALI, I

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

03/01/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/341,821

Applicant(s)

Waring et al.

Examiner

Isis Ghali

Group Art Unit

1615



☒ Responsive to communication(s) filed on Sep 1, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle* 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-10, 13, and 14 is/are pending in the applicat

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10, 13, and 14 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

The receipt of applicants declaration, filed 09/01/1999, and preliminary amendment, filed 09/19/1999, is acknowledged.

#### ***Abstract***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 recites the limitation "an alkylene glycol" while in claim 4 "glycol" only is recited. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Objections***

4. Claim 8 objected to because of the following informalities: the numbering of step (I) is improper. Appropriate correction is required.

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***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 10, 13, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Tipton et al. (EP 0 560 014).

Tipton disclosed a spray apparatus includes a vessel with a dispensing means which can be a valve and nozzle mechanism and it contain a composition which can be administered to the skin, mucous membrane of the mouth and the nose (sinuses), tissue injury (wound), or body cavity (sinuses). The composition contains polyethylene glycol and propylene glycol (wound gel disclosed by the applicants). (See the abstract; col.5, lines 4-6; col.14, lines 24-35; col.17, lines 25-27; col.22, line 52; col.23, line 8). An aerosol vessel containing wound gel for treating wounds or sinuses is obvious expedient . Limitation of the above claims are met by Tipton.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 2-9 and are rejected under 35 U.S.C. 103(a) as being unpatentable over of Court et al. (EP 0 666 081) in view of Sperry et al. (US 5,059,187).

Court et al. are teaching gel wound dressing comprising material impregnated with a composition comprising :

- a) from about 0.05% to 10% by weight of natural gelling agent;
- b) from about 1.0% to 10% by weight of hydrocolloid;
- c) from about 5.0% to 30.0% by weight of an alkylene glycol and
- d) at least 50% by weight of water.

The wound dressing is packaged and sterilized. (See page 2, lines 20-24; page 3, lines 17-18).

However, Court et al. fail to teach the method of making the aerosol vessel.

Sperry is teaching method providing an aerosol container and method for cleaning the wound including introducing the wound cleaning solution though an opening into a pouch and

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then the opening is closed by a valve, the container is then sterilized and the propellant is introduced into the can. (See the abstract; col.3, lines 1-10; col.5, lines 8-21).

Accordingly, it would have been obvious for one having ordinary skill in the art at the time of the invention to include the gel composition of Court in the aerosol vessel of Sperry, and the artisan would be motivated with the teaching of Court of extruding the composition in the form of gel through a nozzle onto both sides of gauze and use it as a wound dressing (page 3, lines 14-16), with reasonable expectation of success of treating wounds by delivering the claimed composition from an aerosol vessel.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Isis Ghali whose telephone number is (703) 305-4048. The examiner can normally be reached on Monday-Friday from 8:30 to 5:30 Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

Examiner Isis Ghali

February 24, 2000.

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600